

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

LOGISTICS PERSONNEL CORP.

Employer

and

Case 21-RC-20242

UNITED SERVICE WORKERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner and Teamsters 986, International Brotherhood of Teamsters, AFL-CIO¹, are, and each of them is, a

¹ At the hearing, Teamster 986 was granted intervenor status as the incumbent collective-bargaining representative of the Unit employees.

labor organization within the meaning of Section 2(5) of the Act and each seeks to represent certain employees of the Employer.

4. A question affecting commerce exists² concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act³:

All bobtail drivers, bobtail floaters, class A drivers, and class A floaters employed by the Employer at the facility located at 918 South Stimson Avenue, City of Industry, California; excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

The only issue presented is the Intervenor's contention that the Petitioner's representatives allegedly told employees that if elected, they intend to turn over representation of the unit to the Amalgamated Industrial Workers Union, AFL-CIO; or merge with them. Based on this reported hearsay, the Intervenor contends that the instant petition should be held in abeyance to permit the Intervenor to file a claim under Article 20 of the AFL-CIO Constitution so as to determine representational jurisdiction within the AFL-CIO. The Intervenor requested, and was denied, a continuance of the instant hearing to permit it to locate and present witnesses to establish its contention. No party contends that the Petitioner is presently affiliated with

² At the hearing, the Intervenor and the Petitioner stipulated that a question concerning representation exists. The Employer does not raise this matter as an issue, although its written stipulation is silent on this question.

³ The parties stipulated with regard to the appropriateness of the unit. The parties further stipulated that there is no contract bar to an election and

the AFL-CIO. No other evidence was presented in support of the Intervenor's contention. Based on the record, it is concluded that even if the Intervenor had successfully established that Petitioner's representatives had stated to employees that the Petitioner would in the future affiliate, either directly or via merger, with the AFL-CIO, there is no evidence that as of the date of the hearing, there is any effective affiliation with the AFL-CIO so as to bring it within the purview of the AFL-CIO's Constitution. Any possibility of future affiliation is mere speculation. Accordingly, the Intervenor's request that the instant petition be held in abeyance is denied⁴.

With regard to the contention that the Petitioner's representatives had indicated to employees that it would turn over representation to another labor organization, it is concluded that the contention is mere conjecture and premature. Moreover even if such a statement was found to have been made, it "affords no grounds for dismissal of the petition.". Houston Sash & Door Company, Inc., 127 NLRB 1089, fn. 3 (1960).

At the hearing⁵, the Intervenor and the Petitioner submitted that the instant election should be conducted by mail ballot based on the Employer's operation and the disparate

that Teamsters Local 986, International Brotherhood of Teamsters, AFL-CIO, is the current collective-bargaining representative of the unit employees.

⁴ Moreover, the Board has "clearly indicated that the obligations, if found to exist, of a 'No-Raiding' convention are insufficient ground under Board policy for a dismissal of a representation proceeding." Penn-Keystone Realty Corp., 191 NLRB 800, 801 (1971), citing North American Aviation, Inc., 115 NLRB 1090, 1091, fn.3 (1956).

⁵ The instant hearing was conducted without the presence of the Employer. The Employer submitted a signed written stipulation concerning commerce, labor organization status, no current contract bar, description of the appropriate

schedules of the unit employees. Based on the parties' representations, it is concluded that the instant election shall be conducted via mail ballot procedures.

There are approximately 40 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are those employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by United

unit, a waiver of its right to participate at the hearing, present evidence at the hearing and to file a brief.

Service Workers of America; by Teamsters Local 986, International Brotherhood of Teamsters, AFL-CIO; or by neither labor organization.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters in the unit and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, California 90017, on or before August 30, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement herein imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the

day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on September 6, 2000.

DATED at Los Angeles, California, this 23rd day of August, 2000.

/S/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

339-7562

